

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE  
LITIGATION

MDL 1456

Master File No. 01-CV-12257-PBS

Judge Patti B. Saris

THIS DOCUMENT RELATES TO:

*Rice v. Abbott Laboratories, et al.*, N.D.  
Cal. Case No. C 02-3925 MJJ

*Thompson v. Abbott Laboratories, et al.*,  
N.D. Cal. Case No. C 02-4450 MJJ

**DECLARATION OF ROBERT D. SANFORD IN OPPOSITION TO MOTION TO  
DISMISS BY DEFENDANT FUJISAWA USA, INC.**

I, Robert D. Sanford, hereby declare:

1. I am an attorney licensed to practice in the State of California and of  
counsel with Moscone, Emblidge & Quadra LLP, counsel of record for Plaintiffs John  
Rice and Constance Thompson in the actions captioned above. I have personal  
knowledge of all matters set forth below and am competent to testify thereto.

2. On September 23, 2002, I wrote to Defense counsel in *Thompson*,  
including the attorneys representing Defendant Fujisawa USA, Inc., in attempt to resolve  
the issue of service of process. A copy of my September 23, 2002 letter is attached as  
Exhibit A and incorporated herein by reference. I requested that Defendants' counsel

advise whether they would accept service on behalf of their client, unless they agreed that the notice of removal was a general appearance that obviated the need for service.

3. While no defense counsel agreed that the notice of removal was a general appearance, some defense counsel replied to my September 23, 2002 letter with correspondence that stated that service was stayed by the *Thompson* court's order of October 30, 2002 staying all proceedings. For example, in a letter dated October 4, 2002, counsel for Defendant Bayer Corporation stated that "further action in regard to [my September 23] letter appears unnecessary," given the stay order. As another example, counsel for Defendant Aventis Pharmaceuticals stated in a letter dated October 10, 2002 that the issue of service was "currently moot in light of the Court's September 30, 2002 Order staying all further proceedings in this case." Copies of the letters from counsel for Bayer Corporation and Aventis Pharmaceutical are attached as Exhibits B and C, respectively, and incorporated herein by reference.

4. Counsel for Defendant Fujisawa USA, Inc. ("Fujisawa") also responded to my September 23, 2002 letter with a letter dated October 1, 2002, a copy of which is attached as Exhibit D and incorporated herein by reference. Fujisawa's attorney did not address the issue of the stay's effect, but advised that they were not authorized to accept service on behalf of their client.

5. The stays in *Rice* and *Thompson* were lifted on February 20, 2003, when Judicial Panel on Multidistrict Litigation ("JPML") denied Rice and Thompson's motions to vacate the order conditionally transferring the actions to *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL 1456 (the "AWP Litigation"). I understand that complaints in *Rice* and *Thompson* are superceded by the Master Consolidated

Complaint under Case Management Order No. 2, which is subject to a pending motion to dismiss. I also understand that no Defendant is obligated to respond to the *Rice* or *Thompson* complaints. In light of these circumstances, I believe that hat the issue of service could and should be deferred until a ruling on the motion to dismiss, or at least until 120 days after the transfer occurred. I believe that the dispositive motion to dismiss the Master Consolidated Complaint took precedence over subsidiary issues of when and what process was required in tag-along actions. However, any guidance from the Court to effect service in a manner coordinated with the AWP Litigation would be greatly appreciated.

6. When Fujisawa served its motion to dismiss without first contacting counsel for Rice and Thompson, I immediately attempted to resolve the issue of service without burdening the Court. After an exchange of voicemail messages, I spoke by telephone with Kathleen H. McGuan, Fujisawa's attorney, on April 7, 2003. Although I advised Ms. McGuan of the stays in *Rice* and *Thompson*, she refused to withdraw the motion to dismiss. She also refused to accept service on behalf of Fujisawa. I confirmed the April 7<sup>th</sup> phone conversation in a letter to Ms. McGuan dated April 14, 2000, a copy of which is attached as Exhibit E and incorporated herein by reference.

7. In response to my April 14 letter, I received a letter from Ms. McGuan, dated April 15, 2003, that is attached as Exhibit F and incorporated herein by reference. Ms. McGuan's letter reiterated Fujisawa's position that it would not withdraw the motion to permit resolution of the issue of service.

8. On April 16, 2003, I wrote again to Ms. McGuan in a final effort to obtain agreement on the time and manner of service in a manner coordinated with the other tag-

along actions in the AWP Litigation. A copy of my letter is attached as Exhibit G and incorporated herein by reference. I have not received a response from Ms. McGuan.

9. On April 17, 2003, I caused the original Complaints and Summons in *Rice* and *Thompson* to be transmitted to a process server in Los Angeles for service on Fujisawa's authorized agent for service of process, CT Corporation Systems, in California. I anticipate that the proof of service will be filed shortly. With guidance from the Court, Rice and Thompson will take any other steps necessary to effect proper service on Fujisawa and all other unserved Defendants in a manner coordinated with other tag-along actions in the AWP Litigation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: April 17, 2003



Robert D. Sanford



LAW OFFICES OF  
**MOSCONE, EMBLIDGE & QUADRA, LLP**  
180 Montgomery Street, Suite 1240  
San Francisco, California 94104-4238  
Tel: (415) 362-3599  
Fax: (415) 362-7332

September 23, 2002

Kirke M. Hasson, Esq.  
Pillsbury Winthrop LLP  
50 Fremont Street  
P.O. Box 7880  
San Francisco, California 94010

Re:     Thompson v. Abbott Laboratories, Inc., et al.  
          United States District Court, Northern District of California  
          Case No. C-02-04450 CW

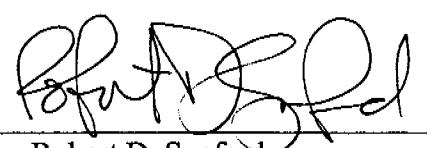
Dear Mr. Hasson:

We received the Notice of Removal filed by your client, Gensia Sicor Pharmaceuticals, Inc., and joined by the co-defendants listed in the enclosed attachment, who are receiving a copy of this letter. Setting aside the issue whether this action may be properly removed to federal court, we believe that the removal is a general appearance and thus obviates the need for service of process. We would appreciate receiving written confirmation by Wednesday, October 2, 2002 from each Defendant that it concurs with this position. If any Defendant contends that it has not appeared in this action, please advise us in writing by October 2 whether counsel will accept service on behalf of the Defendant.

Your attention to this matter is appreciated.

Very truly yours,

MOSCONE, EMBLIDGE & QUADRA, LLP

By   
Robert D. Sanford

cc: Attached List

*Constance Thompson v. Abbott Laboratories, Inc., et al.*

**SERVICE LIST**

**Attorneys for Abbott Laboratories:**

R. Christopher Cook, Esq.  
**Jones, Day, Reavis & Pogue**  
51 Louisiana Avenue, N.W.  
Washington, DC 20001-2113  
Telephone: (202) 879-3939  
Facsimile: (202) 626-1700

Jeffrey I. Weinberger, Esq.  
Kelley M. Klaus, Esq.  
**Munger Tolles and Olson, LLP**  
355 S. Grand Avenue, 35<sup>th</sup> Floor  
Los Angeles, CA 90071  
Telephone: (213) 683-9100  
Facsimile: (213) 687-3702

**Attorneys for Alpha Therapeutic Corporation:**

Dennis M. Duggan, Jr., Esq.  
David M. Ryan, Esq.  
Melissa Bayer Tearney, Esq.  
**Nixon Peabody LLP**  
101 Federal Street  
Boston, MA 02110  
Telephone: (617) 345-1000  
Facsimile: (617) 345-1300

Nancy L. Newman  
**Knapp, Petersen and Clarke**  
500 N. Brand Blvd., Suite 2000  
Glendale, CA 91203  
Telephone: (818) 547-5109  
Facsimile: (818) 547-5329

**Attorneys for Amgen Inc.:**

Joseph H. Young, Esq.  
Steven Barley, Esq.  
**Hogan & Hartson LLP**  
111 S. Calvert Street, Suite 1600  
Baltimore, MD 21202  
Telephone: (410) 659-2700  
Facsimile: (410) 539-6981

Richard L. Stone, Esq.  
**Hogan & Hartson LLP**  
2049 Century Park East, Suite 700  
Los Angeles, CA 90067  
Telephone: (310) 551-6655  
Facsimile: (310) 551-0364

**Attorneys for Apothecon and Bristol-Myers Squibb Co.:**

Steven M. Edwards, Esq.  
Lyndon M. Tretter, Esq.  
**Hogan & Hartson LLP**  
875 Third Avenue  
New York, NY 10022  
Telephone: (212) 918-3000  
Facsimile: (212) 918-3100

Kenneth D. Klein, Esq.  
**Hogan & Hartson LLP**  
500 S. Grand Avenue, Suite 1900  
Los Angeles, CA 90071  
Telephone: (213) 337-6700  
Facsimile: (213) 337-3701

**Attorneys for Armour Pharmaceutical and Aventis Behring LLC:**

Edward C. Duckers, Esq.  
**Hogan & Hartson LLP**  
555 13<sup>th</sup> Street, N.W.  
Washington, DC 20004-1109  
Telephone: (202) 637-5600  
Facsimile: (202) 637-5910

Michele C. Coyle, Esq.  
**Hogan & Hartson LLP**  
500 S. Grand Avenue, Suite 1900  
Los Angeles, CA 90071  
Telephone: (213) 337-6700  
Facsimile: (213) 337-3701

**Attorneys for AstraZeneca Pharmaceuticals LP:**

D. Scott Wise, Esq.  
Kimberley D. Harris, Esq.  
**Davis Polk & Wardell**  
450 Lexington Avenue  
New York, NY 10017  
Telephone: (212) 450-4000  
Facsimile: (212) 450-3800

Charles B. Cohler, Esq.  
Christopher S. Yates, Esq.  
**Lasky, Haas & Cohler, PC**  
Two Transamerica Center  
505 Sansome Street, 12<sup>th</sup> Floor  
San Francisco, CA 94111-3183  
Telephone: (415) 788-2700  
Facsimile: (415) 981-4025

**Attorneys for Aventis Pharmaceuticals Inc.:**

Paul S. Schleifman, Esq.  
**Shook, Hardy & Bacon LLP**  
600 14<sup>th</sup> Street, N.W., Suite 800  
Washington, DC 20005-2004  
Telephone: (202) 783-8400  
Facsimile: (202) 783-4211

Michael L. Koon, Esq.  
**Shook, Hardy & Bacon LLP**  
One Kansas City Place  
1200 Main Street  
Kansas City, MO 64105-2118  
Telephone: (816) 474-6550  
Facsimile: (816) 421-5547

Joan M. Haratani, Esq.  
**Shook, Hardy & Bacon LLP**  
333 Bush Street, Suite 600  
San Francisco, CA 94104  
Telephone: (415) 544-1900  
Facsimile: (415) 391-0281

**Attorneys for Baxter Healthcare Corporation:**

Merle M. DeLancey, Jr., Esq.  
Tina Ducharme Reynolds, Esq.  
John P. Pierce, Esq.  
**Dickstein Shapiro Morin & Oshinsky**  
2101 L Street, N.W.  
Washington, DC 22037  
Telephone: (202) 785-9700  
Facsimile: (202) 887-0689

**Attorneys for Bayer Corp.:**

Richard D. Raskin, Esq.  
Bruce Zessar, Esq.  
**Sidley Austin Brown & Wood**  
Bank One Plaza  
10 S. Dearborn Street  
Chicago, IL 60603  
Telephone: (312) 853-2170  
Facsimile: (312) 853-7036

Michael Kelley, Esq.  
Kimberly A. Dunne, Esq.  
**Sidley Austin Brown & Wood**  
555 West 5<sup>th</sup> Street, Suite 4000  
Los Angeles, CA 90013-1010  
Telephone: (213) 896-6659  
Facsimile: (213) 896-6600

**Attorneys for Ben Venue Laboratories and Roxanne Laboratories, Inc.:**

Paul Coval, Esq.  
Nina Webb-Lawton, Esq.  
**Vorys, Sater, Seymour & Pease LLP**  
P.O. Box 1008  
52 East Gay Street  
Columbus, OH 43216-1008  
Telephone: (614) 464-5635  
Facsimile: (614) 719-4674

**Attorneys for Chiron Corporation:**

Ronald L. Castle, Esq.  
**Arent Fox Kintner Plotkin & Kahn PLLC**  
1050 Connecticut Avenue, N.W.  
Washington, DC 20036  
Telephone: (202) 857-6188  
Facsimile: (202) 857-6395

Mark D. Petersen, Esq.  
**Farella, Braun & Martell LLP**  
235 Montgomery St., 30<sup>th</sup> Floor  
San Francisco, CA 94104  
Telephone: (415) 954-4406  
Facsimile: (415) 954-4480

**Attorneys for Dey, Inc.:**

Stephen M. Hudspeth, Esq.  
Lisa M. Lewis, Esq.  
**Coudert Brothers LLP**  
1114 Avenue of the Americas  
New York, NY 10036  
Telephone: (212) 626-4400  
Facsimile: (212) 626-4120

Erik A. Hanshew, Esq.  
Stephen M. Hudspeth  
Lisa M. Lewis  
**Coudert Brothers LLP**  
530 Lytton Avenue, Suite 300  
Palo Alto, CA 94301  
Telephone: (650) 470-2900  
Facsimile: (650) 470-2901

**Attorneys for Faulding Pharmaceutical Co.:**

Denise H. Field, Esq.  
**Buchalter Nemer Fields & Younger**  
333 Market Street, 29th Floor  
San Francisco, CA 94105  
Telephone: (415) 227-3547  
Facsimile: (415) 227-3529

**Attorneys for Fujisawa USA, Inc.:**

Kathleen H. McGuan, Esq.  
**Reed Smith LLP**  
1301 K Street, N.W.  
Suite 1100, East Tower  
Washington, DC 20005  
Telephone: (202) 414-9230  
Facsimile: (202) 414-9199

Michael T. Scott, Esq.  
**Reed Smith LLP**  
2500 One Liberty Place  
1650 Market Street  
Philadelphia, PA 19103  
Telephone: (215) 851-8100  
Facsimile: (215) 851-1420

Charlene S. Shimada, Esq.  
**Bingham McCutchen LLP**  
Three Embarcadero Center  
San Francisco, CA 94111  
Telephone: (415) 393-2000  
Facsimile: (415) 393-2286

**Attorneys for Geneva Pharmaceuticals, Inc.:**

Wayne A. Cross, Esq.  
Robert A. Milne, Esq.  
Eamon O'Kelly  
**Dewey Ballantine LLP**  
1301 Avenue of the Americas  
New York, NY 10019  
Telephone: (212) 259-8000  
Facsimile: (212) 259-6333

Jeffrey R. Witham, Esq.  
**Dewey Ballantine LLP**  
333 S. Grand Avenue  
Los Angeles, CA 90071-1530  
Telephone: (213) 621-6529  
Facsimile: (213) 621-6100

**Attorneys for Gensia Sicor Pharmaceuticals, Inc.:**

Kirke M. Hasson, Esq.  
Reed E. Harvey, Esq.  
Albert G. Lin, Esq.  
**Pillsbury Winthrop LLP**  
50 Fremont Street  
P.O. Box 7880  
San Francisco, CA 94120-7880  
Telephone: (415) 983-1000  
Facsimile: (415) 983-1200

Attorneys for SmithKline Beecham Corporation, dba GlaxoSmithKline:

Matthew L. Larrabee, Esq.  
Carol Lynn Thompson, Esq.  
**Heller Ehrman White & McAuliffe LLP**  
333 Bush Street  
San Francisco, CA 94104  
Telephone: (415) 772-6000  
Facsimile: (415) 772-6268

Robert B. Hubbell, Esq.  
**Heller Ehrman White & McAuliffe LLP**  
601 S. Figueroa Street, 40th Floor  
Los Angeles, CA 90017  
Telephone: (213) 689-0200  
Facsimile: (213) 614-1868

Attorneys for Immunex Corp.:

David Burman, Esq.  
**Perkins Coie LLP**  
1201 Third Avenue, Suite 4800  
Seattle, WA 98101  
Telephone: (206) 583-8888  
Facsimile: (206) 583-8500

Steven Bauer, Esq.  
Peter Huston, Esq.  
**Latham & Watkins**  
505 Montgomery St., Suite 1900  
San Francisco, CA 94111  
Telephone: (415) 391-0600  
Facsimile: (415) 395-8095

Attorneys for Ivax Pharmaceuticals:

Bruce A. Wessel, Esq.  
**Irell & Manella LLP**  
1800 Avenue of the Stars  
Suite 900  
Los Angeles, CA 90067  
Telephone: (310) 277-1010  
Facsimile: (310) 203-7199

Attorneys for Mylan Laboratories:

Brian S. Roman, Esq.  
**DKW Law Group, PC**  
58th Floor, USX Tower  
600 Grant Street  
Pittsburgh, PA 15219-2703  
Telephone: (412) 355-3983  
Facsimile: (412) 355-2609

Allan B. Cooper, Esq.  
**Ervin, Cohen & Jessup LLP**  
9401 Wilshire Blvd., 9th Floor  
Beverly Hills, CA 90212  
Telephone: (310) 273-6333  
Facsimile: (310) 859-2325

Attorneys for Novartis Pharmaceuticals Corporation:

Aton Arbisser, Esq.  
**Kaye Scholer LLP**  
1999 Avenue of the Stars  
Suite 1600  
Los Angeles, CA 90067  
Telephone: (310) 788-1000  
Facsimile: (310) 788-1200

Attorneys for Pharmacia:

Scott A. Stempel, Esq.  
**Morgan, Levis & Bockius LLP**  
1111 Pennsylvania Avenue, N.W.  
Washington, DC 20004  
Telephone: (202) 739-3000  
Facsimile: (202) 739-3001

John C. Dodds, Esq.  
**Morgan, Levis & Bockius LLP**  
1701 Market Street  
Philadelphia, PA 19103-2921  
Telephone: (215) 936-5000  
Facsimile: (215) 936-5001

Theodore G. Spanos, Esq.  
**Morgan, Levis & Bockius LLP**  
300 S. Grand Avenue, 22nd Floor  
Los Angeles, CA 90071  
Telephone: (213) 612-2500  
Facsimile: (213) 612-2554

Attorneys for The Purdue Frederick Company and Purdue Pharma L.P.:

Lori A. Schechter, Esq.  
**Morrison & Foerster LLP**  
425 Market Street  
San Francisco, CA 94105-2482  
Telephone: (415) 268-7000  
Facsimile: (415) 268-7522

Attorneys for Schering Plough Corporation and Warrick Pharmaceuticals:

Brien O'Connor, Esq.  
Kirsten Mayer, Esq.  
David Potter, Esq.  
**Ropes & Gray**  
One International Place  
Boston, MA 02110  
Telephone: (617) 951-7000  
Facsimile: (617) 951-7050

Steven M. Kohn, Esq.  
**Crosby, Heafy, Roach & May**  
1999 Harrison Street  
Oakland, CA 94612  
Telephone: (510) 763-2000  
Facsimile: (510) 273-8832

Attorneys for Watson Pharma:

Douglas B. Farquhar, Esq.  
**Hyman, Phelps & McNamara PC**  
700 13th Street, N.W., Suite 1200  
Washington, DC 20005  
Telephone: (202) 737-9624  
Facsimile: (202) 737-9329

Kim W. West, Esq.  
**Arter & Hadden LLP**  
555 California Street, Suite 3130  
San Francisco, CA 94104  
Telephone: (415) 617-2100  
Facsimile: (415) 912-3636

**Attorneys for Wyeth:**

S. Craig Holden, Esq.  
Connie E. Eiseman, Esq.  
**Ober, Kaler, Grimes & Shriver**  
**PC**  
120 E. Baltimore Street  
Baltimore, MD 21202  
Telephone: (410) 685-1120  
Facsimile: (410) 547-0699

Stuart M. Gordon, Esq.  
Fletcher Alford, Esq.  
**Gordon & Rees LLP**  
275 Battery Street, Suite 2000  
San Francisco, CA 94111  
Telephone: (415) 986-5900  
Facsimile: (415) 986-8054



SIDLEY AUSTIN BROWN & WOOD LLP

CHICAGO  
DALLAS  
NEW YORK  
SAN FRANCISCO  
WASHINGTON, D.C.

555 WEST FIFTH STREET  
LOS ANGELES, CALIFORNIA 90013  
TELEPHONE 213 896 6000  
FACSIMILE 213 896 6600  
www.sidley.com  
FOUNDED 1866

BEIJING  
GENEVA  
HONG KONG  
LONDON  
SHANGHAI  
SINGAPORE  
TOKYO

WRITER'S DIRECT NUMBER  
(213) 896-6659

WRITER'S E-MAIL ADDRESS  
kdunne@sidley.com

October 4, 2002

**VIA FACSIMILE**

Robert D. Sanford, Esq.  
Law Office of Moscone, Emblidge & Quadra, LLP  
180 Montgomery Street, Suite 1240  
San Francisco, CA 94104

Re: Thompson v. Abbott Laboratories Inc., et al.  
United States District Court, Northern District of California  
Case No. C-02-04450 CW

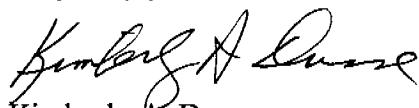
Dear Mr. Sanford:

On behalf of Bayer Corporation ("Bayer"), we wanted to respond your letter dated September 23, 2002, to Kirke M. Hasson, Esq. Please be advised that we do not concur with your position that a non-served defendant's consent to removal constitutes a general appearance obviating the need for service of process.

However, in light of the order from Judge Wilken staying all further proceedings in this case pending a decision by the Judicial Panel on Multidistrict Litigation ("JPML") regarding transfer of this case to the District of Massachusetts for consolidated pretrial proceedings, further action in regard to your letter appears to be unnecessary at this time. At such time as the stay is lifted or the district court or the JPML enters another appropriate order relative to the matter which requires addressing this issue, be advised that we will consider accepting service on behalf of Bayer provided Plaintiff agrees that Bayer is not required to answer or otherwise respond to the Complaint until sixty (60) days after the Court's ruling on a motion to remand in this action, or if Plaintiff decides not to file a remand motion, until sixty (60) days after we receive written notification of that decision.

Please advise in writing if this is acceptable to you.

Very truly yours,

  
Kimberly A. Dunne

cc: All Counsel on Attached Service List

***Constance Thompson v. Abbott Laboratories, Inc., et al.***

**Attorneys for Plaintiff:**

Christopher Moscone, Esq.  
G. Scott Emblidge, Esq.  
James A. Quadra, Esq.  
**Moscone, Emblidge &  
Quadra LLP**  
180 Montgomery Street, Suite 1240  
San Francisco, CA 94104-4238  
Telephone: (415) 362-3599  
Facsimile: (415) 362-7332

**Attorneys for Abbott**  
**Laboratories:**

R. Christopher Cook, Esq.  
**Jones, Day, Reavis & Pogue**  
51 Louisiana Avenue, N.W.  
Washington, DC 20001-2113  
Telephone: (202) 879-3939  
Facsimile: (202) 626-1700

Jeffrey I. Weinberger, Esq.  
Kelley M. Klaus, Esq.  
**Munger Tolles and Olson, LLP**  
355 S. Grand Avenue, 35th Floor  
Los Angeles, CA 90071  
Telephone: (213) 683-9100  
Facsimile: (213) 687-3702

**Attorneys for Alpha Therapeutic Corporation:**

Dennis M. Duggan, Jr., Esq.  
David M. Ryan, Esq.  
Melissa Bayer Tearney, Esq.  
**Nixon Peabody LLP**  
101 Federal Street  
Boston, MA 02110  
Telephone: (617) 345-1000  
Facsimile: (617) 345-1300

Nancy L. Newman  
**Knapp, Petersen and Clarke**  
500 N. Brand Blvd., Suite 2000  
Glendale, CA 91203  
Telephone: (818) 547-5109  
Facsimile: (818) 547-5329

Attorneys for Amgen Inc.:

Joseph H. Young, Esq.  
Steven Barley, Esq.  
**Hogan & Hartson LLP**  
111 S. Calvert Street, Suite 1600  
Baltimore, MD 21202  
Telephone: (410) 659-2700  
Facsimile: (410) 539-6981

Richard L. Stone, Esq.  
**Hogan & Hartson LLP**  
2049 Century Park East, Suite 700  
Los Angeles, CA 90067  
Telephone: (310) 551-6655  
Facsimile: (310) 551-0364

**Attorneys for Apothecon and  
Bristol-Myers Squibb Co.:**

Steven M. Edwards, Esq.  
Lyndon M. Tretter, Esq.  
**Hogan & Hartson LLP**  
875 Third Avenue  
New York, NY 10022  
Telephone: (212) 918-3000  
Facsimile: (212) 918-3100

Kenneth D. Klein, Esq.  
**Hogan & Hartson LLP**  
500 S. Grand Avenue, Suite 1900  
Los Angeles, CA 90071  
Telephone: (213) 337-6700  
Facsimile: (213) 337-3701

Attorneys for Armour  
Pharmaceutical and Aventis  
Behring LLC

Edward C. Duckers, Esq.  
**Hogan & Hartson LLP**  
555 13th Street, N.W.  
Washington, DC 20004-1109  
Telephone: (202) 637-5600  
Facsimile: (202) 637-5910

**Michele C. Coyle, Esq.  
Hogan & Hartson LLP  
500 S. Grand Avenue, Suite 1900  
Los Angeles, CA 90071  
Telephone: (213) 337-6700  
Facsimile: (213) 337-3701**

**Attorneys for AstraZeneca  
Pharmaceuticals LP:**

D. Scott Wise, Esq.  
Kimberley D. Harris, Esq.  
**Davis Polk & Wardwell**  
450 Lexington Avenue  
New York, NY 10017  
Telephone: (212) 450-4000  
Facsimile: (212) 450-3800

Charles B. Cohler, Esq.  
Christopher S. Yates, Esq.  
**Lasky, Haas & Cohler, PC**  
Two Transamerica Center  
505 Sansome Street, 12th Floor  
San Francisco, CA 94111-3183  
Telephone: (415) 788-2700  
Facsimile: (415) 981-4025

Attorneys for Aventis  
Pharmaceuticals Inc.:

Paul S. Schleifman, Esq.  
**Shook, Hardy Bacon LLP**  
600 14th Street, N.W., Suite 800  
Washington, DC 20005-2004  
Telephone: (202) 783-8400  
Facsimile: (202) 783-4211

Michael L. Koon, Esq.  
**Shook, Hardy & Bacon LLP**  
One Kansas City Place  
1200 Main Street  
Kansas City, MO 64105-2118  
Telephone: (816) 474-6550  
Facsimile: (816) 421-5547

Joan M. Haratani, Esq.  
**Shook, Hardy & Bacon LLP**  
333 Bush Street, Suite 600  
San Francisco, CA 94104  
Telephone: (415) 544-1900  
Facsimile: (415) 391-0281

1      **Attorneys for Baxter Healthcare**  
 2      **Corporation:**

3      Merle M. DeLancey, Jr., Esq.  
 4      Tina Ducharme Reynolds, Esq.  
 5      John P. Pierce, Esq.  
 6      **Dickstein Shapiro Morin &**  
**Oshinsky**  
 7      2101 L Street, N.W.  
 8      Washington, DC 22037  
 9      Telephone: (202) 785-9700  
 10     Facsimile: (202) 887-0689

11     **Attorneys Bayer Corp.:**

12     Richard D. Raskin, Esq.  
 13     Bruce Zessar, Esq.  
 14     **Sidley Austin Brown & Wood**  
 15     Bank One Plaza  
 16     10 S. Dearborn Street  
 17     Chicago, IL 60603  
 18     Telephone: (312) 853-2170  
 19     Facsimile: (312) 853-7036

20     Michael Kelley, Esq.  
 21     Kimberly A. Dunne, Esq.  
 22     **Sidley Austin Brown & Wood**  
 23     555 West 5th Street, Suite 4000  
 24     Los Angeles, CA 90013-1010  
 25     Telephone: (213) 896-6659  
 26     Facsimile: (213) 896-6600

27     **Attorneys for Ben Venue**  
 28     **Laboratories and Roxanne**  
**Laboratories, Inc.:**

29     Paul Coval, Esq.  
 30     Nina Webb-Lawton, Esq.  
 31     **Vorys, Sater, Seymour & Pease**  
**LLP**  
 32     P.O. Box 1008  
 33     52 East Gay Street  
 34     Columbus, OH 43216-1008  
 35     Telephone: (614) 464-5635  
 36     Facsimile: (614) 719-4674

37      **Attorneys for Chiron**  
 38      **Corporation:**

39      Ronald L. Castle, Esq.  
 40      **Arent Fox Kintner Plotkin &**  
**Kahn PLLC**  
 41      1050 Connecticut Avenue, N.W.  
 42      Washington, DC 20036  
 43      Telephone: (202) 857-6188  
 44      Facsimile: (202) 857-6395

45      Mark D. Petersen, Esq.  
 46      **Farella, Braun & Martell LLP**  
 47      235 Montgomery St., 30th Floor  
 48      San Francisco, CA 94104  
 49      Telephone: (415) 954-4406  
 50      Facsimile: (415) 954-4480

51      **Attorneys for Dev, Inc.:**

52      Stephen M. Hudspeth, Esq.  
 53      Lisa M. Lewis, Esq.  
 54      **Coudert Brothers LLP**  
 55      1114 Avenue of the Americas  
 56      New York, NY 10036  
 57      Telephone: (212) 626-4400  
 58      Facsimile: (212) 626-4120

59      Erik A. Hanshew, Esq.  
 60      Stephen M. Hudspeth  
 61      Lisa M. Lewis  
 62      **Coudert Brothers LLP**  
 63      530 Lytton Avenue, Suite 300  
 64      Palo Alto, CA 94301  
 65      Telephone: (650) 470-2900  
 66      Facsimile: (650) 470-2901

67      **Attorneys for Faulding**  
**Pharmaceutical Co.:**

68      Denise H. Field, Esq.  
 69      **Buchalter Nemer Fields &**  
**Younger**  
 70      333 Market Street, 29th Floor  
 71      San Francisco, CA 94105  
 72      Telephone: (415) 227-3547  
 73      Facsimile: (415) 227-3529

74      **Attorneys for Fujisawa USA, Inc.:**

75      Kathleen H. McGuire, Esq.  
 76      **Reed Smith LLP**  
 77      1301 K Street, N.W.  
 78      Suite 1100, East Tower  
 79      Washington, DC 20005  
 80      Telephone: (202) 414-9230  
 81      Facsimile: (202) 414-9199

82      Michael T. Scott, Esq.  
 83      **Reed Smith LLP**  
 84      2500 One Liberty Place  
 85      1650 Market Street  
 86      Philadelphia, PA 19103  
 87      Telephone: (215) 851-8100  
 88      Facsimile: (215) 851-1420

89      Charlene S. Shimada, Esq.  
 90      **Bingham McCutchen LLP**  
 91      Three Embarcadero Center  
 92      San Francisco, CA 94111  
 93      Telephone: (415) 393-2000  
 94      Facsimile: (415) 393-2286

95      **Attorneys for Geneva**  
**Pharmaceuticals, Inc.:**

96      Wayne A. Cross, Esq.  
 97      Robert A. Milne, Esq.  
 98      Eamon O'Kelly  
 99      **Dewey Ballantine LLP**  
 100     1301 Avenue of the Americas  
 101     New York, NY 10019  
 102     Telephone: (212) 259-8000  
 103     Facsimile: (212) 259-6333

104     Jeffrey R. Witham, Esq.  
 105     **Dewey Ballantine LLP**  
 106     333 S. Grand Avenue  
 107     Los Angeles, CA 90071-1530  
 108     Telephone: (213) 621-6529  
 109     Facsimile: (213) 621-6100

1      **Attorneys for Gensia Sicor**  
 2      **Pharmaceuticals, Inc.:**

3      Kirke M. Hasson, Esq.  
 4      Reed E. Harvey, Esq.  
 5      Albert G. Lin, Esq.  
 6      **Pillsbury Winthrop LLP**  
 7      50 Fremont Street  
 8      P.O. Box 7880  
 9      San Francisco, CA 94120-7880  
 10     Telephone: (415) 983-1000  
 11     Facsimile: (415) 983-1200

12     **Attorneys for SmithKline**  
 13     **Beecham Corporation, dba**  
 14     **GlaxoSmithKline:**

15     Matthew L. Larrabee, Esq.  
 16     Carol Lynn Thompson, Esq.  
 17     **Heller Ehrman White**  
 18     **& McAuliffe LLP**  
 19     333 Bush Street  
 20     San Francisco, CA 94104  
 21     Telephone: (415) 772-6000  
 22     Facsimile: (415) 772-6268

23     Robert B. Hubbell, Esq.  
 24     **Heller Ehrman White**  
 25     **& McAuliffe LLP**  
 26     601 S. Figueroa Street, 40th Floor  
 27     Los Angeles, CA 90017  
 28     Telephone: (213) 689-0200  
 29     Facsimile: (213) 614-1868

30     **Attorneys for Immunex Corp.:**

31     David Burman, Esq.  
 32     **Perkins Coie LLP**  
 33     1201 Third Avenue, Suite 4800  
 34     Seattle, WA 98101  
 35     Telephone: (206) 583-8888  
 36     Facsimile: (206) 583-8500

37     Steven Bauer, Esq.  
 38     Peter Huston, Esq.  
 39     **Latham & Watkins**  
 40     505 Montgomery St., Suite 1900  
 41     San Francisco, CA 94111  
 42     Telephone: (415) 391-0600  
 43     Facsimile: (415) 395-8095

44      **Attorneys for Ivax**  
 45      **Pharmaceuticals:**

46      Bruce A. Wessel, Esq.  
 47      **Irell & Manella LLP**  
 48      1800 Avenue of the Stars  
 49      Suite 900  
 50      Los Angeles, CA 90067  
 51      Telephone: (310) 277-1010  
 52      Facsimile: (310) 203-7199

53      **Attorneys for Mylan Laboratories:**

54      Brian S. Roman, Esq.  
 55      **DKW Law Group, PC**  
 56      58th Floor, USX Tower  
 57      600 Grant Street  
 58      Pittsburgh, PA 15219-2703  
 59      Telephone: (412) 355-3983  
 60      Facsimile: (412) 355-2609

61      Allan B. Cooper, Esq.  
 62      **Ervin, Cohen & Jessup LLP**  
 63      9401 Wilshire Blvd., 9th Floor  
 64      Beverly Hills, CA 90212  
 65      Telephone: (310) 273-6333  
 66      Facsimile: (310) 859-2325

67      **Attorneys for Novartis**  
 68      **Pharmaceuticals Corporation:**

69      Aton Arbisser, Esq.  
 70      **Kaye Scholer LLP**  
 71      1999 Avenue of the Stars  
 72      Suite 1600  
 73      Los Angeles, CA 90067  
 74      Telephone: (310) 788-1000  
 75      Facsimile: (310) 788-1200

76      **Attorneys for Pharmacia:**

77      Scott A. Stempel, Esq.  
 78      **Morgan, Lewis & Bockius LLP**  
 79      1111 Pennsylvania Avenue, N.W.  
 80      Washington, DC 20004  
 81      Telephone: (202) 739-3000  
 82      Facsimile: (202) 739-3001

83      John C. Dodds, Esq.  
 84      **Morgan, Lewis & Bockius LLP**  
 85      1701 Market Street  
 86      Philadelphia, PA 19103-2921  
 87      Telephone: (215) 936-5000  
 88      Facsimile: (215) 936-5001

89      Theodore G. Spanos, Esq.  
 90      **Morgan, Lewis & Bockius LLP**  
 91      300 S. Grand Avenue, 22nd Floor  
 92      Los Angeles, CA 90071  
 93      Telephone: (213) 612-2500  
 94      Facsimile: (213) 612-2554

95      **Attorneys for The Purdue**  
 96      **Frederick Company and Purdue**  
 97      **Pharma L.P.:**

98      Lori A. Schechter, Esq.  
 99      **Morrison & Foerster LLP**  
 100     425 Market Street  
 101     San Francisco, CA 94105-2482  
 102     Telephone: (415) 268-7000  
 103     Facsimile: (415) 268-7522

104     **Attorneys for Schering Plough**  
 105     **Corporation and Warrick**  
 106     **Pharmaceuticals:**

107     Brien O'Connor, Esq.  
 108     Kirsten Mayer, Esq.  
 109     David Potter, Esq.  
 110     **Ropes & Gray**  
 111     One International Place  
 112     Boston, MA 02110  
 113     Telephone: (617) 951-7000  
 114     Facsimile: (617) 951-7050

115     Steven M. Kohn, Esq.  
 116     **Crosby, Heafy, Roach & May**  
 117     1999 Harrison Street  
 118     Oakland, CA 94612  
 119     Telephone: (510) 763-2000  
 120     Facsimile: (510) 273-8832

1 **Attorneys for Watson Pharma:**

2 Douglas B. Farquhar, Esq.  
3 **Hyman, Phelps & McNamara PC**  
4 700 13th Street, N.W., Suite 1200  
5 Washington, DC 20005  
6 Telephone: (202) 737-9624  
7 Facsimile: (202) 737-9329

8 Kim W. West, Esq.  
9 **Arter & Hadden LLP**  
10 555 California Street, Suite 3130  
11 San Francisco, CA 94104  
12 Telephone: (415) 617-2100  
13 Facsimile: (415) 912-3636

14 **Attorneys for Wyeth:**

15 S. Craig Holden, Esq.  
16 Connie E. Eiseman, Esq.  
17 **Ober, Kaler, Grimes & Shriver PC**  
18 120 E. Baltimore Street  
19 Baltimore, MD 21202  
20 Telephone: (410) 685-1120  
21 Facsimile: (410) 547-0699

22 Stuart M. Gordon, Esq.  
23 Fletcher Alford, Esq.  
24 **Gordon & Rees LLP**  
25 275 Battery Street, Suite 2000  
26 San Francisco, CA 94111  
27 Telephone: (415) 986-5900  
28 Facsimile: (415) 986-8054



LAW OFFICES

**SHOOK, HARDY & BACON LLP**

BUENOS AIRES  
GENEVA  
HOUSTON  
KANSAS CITY  
LONDON

HAMILTON SQUARE  
600 14TH STREET, NW, SUITE 800  
WASHINGTON, D.C. 20005-2004  
TELEPHONE (202) 783-8400 ■ FACSIMILE (202) 783-4211

MIAMI  
OVERLAND PARK  
SAN FRANCISCO  
TAMPA  
ZURICH

Paul S. Schleifman  
(202) 639-5611  
pschleifman@shb.com

October 10, 2002

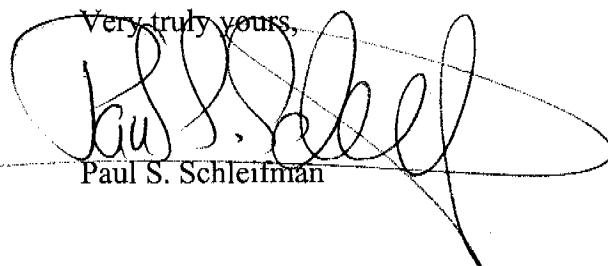
Robert D. Sanford, Esq.  
Moscone, Emblidge & Quadra, LLP  
180 Montgomery Street  
Suite 1240  
San Francisco, CA 94104-4238

**RE: *Thompson v. Abbott Laboratories, et al.***  
**United District Court Case No. C-02-04450 CW**

Dear Mr. Sanford:

We represent Aventis Pharmaceuticals Inc. ("Aventis") and in that capacity have received your September 23, 2002 letter. You claim that Aventis has made a general appearance by participating in the removal and has, therefore, waived service of process of the Complaint. We respectfully disagree. The issue, however, is currently moot in light of the Court's September 30, 2002 Order staying all further proceedings in this case.

We will be happy to discuss this matter with you in more detail once the stay is lifted.

Very truly yours,  
  
Paul S. Schleifman

PSS:jdt



BINGHAM McCUTCHEON

October 1, 2002

Direct: (415) 393-2369  
charlene.shimada@bingham.com

Our File No. 24682-0002

**VIA FACSIMILE AND U.S. MAIL**

Bingham McCutchen LLP  
Three Embarcadero Center  
San Francisco, CA  
94111-4067

415.393.2000  
415.393.2286 fax

bingham.com

Boston  
Hartford  
London  
Los Angeles  
New York  
San Francisco  
Silicon Valley  
Singapore  
Walnut Creek  
Washington

Robert D. Sanford, Esq.  
Moscone, Emblidge & Quadra, LLP  
180 Montgomery Street, Suite 1240  
San Francisco, CA 94104-4238

**Thompson v. Abbott Laboratories, Inc., et al.**  
**Case No. C-02-04450 CW**

Dear Mr. Sanford:

This will respond to your letter to Kirke M. Hasson, Esq., dated September 23, 2002. We do not agree with your position that removal of the above-referenced action to federal court constitutes a general appearance obviating the need for service of process on our client Fujisawa USA, Inc. ("Fujisawa"). Rather, the case law makes clear that a non-served defendant's consent to removal does not waive any jurisdictional defenses or objections to service of process. *General Inv. Co. v. Lake Shore & Michigan S. Ry. Co.*, 260 U.S. 261, 268-269 (1922) ("[I]t is well settled that a petition for removal, even if not containing [a reservation of the right to object to the sufficiency of service], does not amount to a general appearance, but only a special appearance, and that after the removal the party securing it has the same right to invoke the decision of the United States court on the validity of the prior service that he has to ask its judgment on the merits.").<sup>1</sup>

<sup>1</sup> See also *Dielsi v. Falk*, 916 F.Supp. 985, 994 (C.D. Cal. 1996) (noting that a defendant does not waive jurisdictional challenges by removing case to federal court.); *DiCesare Engler Prods., Inc. v. Mainman Ltd.*, 421 F.Supp. 116, 121 (W.D. Pa. 1976) (noting that defendants' removal of action to federal court did not constitute waiver of defects in service of process).

Robert D. Sanford, Esq.  
October 1, 2002  
Page 2

Furthermore, we are not authorized to accept service on behalf of Fujisawa.

Very truly yours,

*Charlene S. Shimada*

Charlene S. Shimada

Bingham McCutchen LLP  
bingham.com



LAW OFFICES OF  
**MOSCONE, EMBLIDGE & QUADRA, LLP**  
180 Montgomery Street, Suite 1240  
San Francisco, California 94104-4230  
Tel: (415) 362-3599  
Fax: (415) 362-7332

April 14, 2003

**Via Facsimile Only**

Kathleen H. McGuan  
Reed Smith  
1301 K Street, N.W.  
Suite 1100 – East Tower  
Washington D.C. 20005-3373

**RE: In re Pharmaceutical Industry Average Wholesale Price Litigation,  
MDL No. 1456, Rice v. Abbott Laboratories, et al., N.D. Cal. Case No. C 02-  
3925 MJJ, Thompson v. Abbott Laboratories, et al, N.D. Cal. Case No. C 02-  
4450 MJJ**

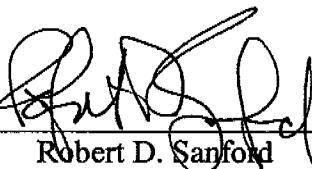
Dear Ms. McGuan:

This firm represents Plaintiffs in the *Rice* and *Thompson* matters referred to above. I write to confirm our phone conversation on April 7<sup>th</sup> in which you refused to withdraw the motion to dismiss Plaintiffs' complaints filed by Defendant Fujisawa USA, Inc. I advised you that the United States District Court for the Northern District of California had stayed all proceedings pending a ruling on Plaintiffs' motion to vacate the conditional transfer order transferring the cases to MDL Case No. 1456. Although you contend that "it is not the law" that the stay affected service of process, you offer no authority for your position which is not addressed in the motion. The law is to the contrary. *See, e.g., DeTie v. Orange County*, 152 F.3d 1109, (9<sup>th</sup> Cir. 1998).

This letter also confirms your refusal to accept service on behalf of Fujisawa, and that Fujisawa's motion to dismiss was served on by Federal Express on April 4, 2003. Under Local Rule 7.1(b), Plaintiffs' opposition to the motion is due on April 18, 2003.

Very truly yours,

MOSCONE, EMBLIDGE & QUADRA LLP

By   
Robert D. Sanford

cc: Edward Nortargiacomo, Esq.

HP LaserJet 3100  
Printer/Fax/Copier/ScannerAD HOC BROADCAST REPORT for  
Moscone, Emblidge & Quadra, LLP  
415 984 0414  
Apr-14-03 2:25PM

Job	Phone Number	Start Time	Pages	Mode	Status
101	12024149299.....	4/14 2:23PM.....	2/ 2	BC .....	Completed.....
101	16174823003.....	4/14 2:24PM.....	2/ 2	BC .....	Completed.....

LAW OFFICES OF  
**MOSCONI, EMBLIDGE & QUADRA, LLP**  
180 Montgomery Street, Suite 1200  
San Francisco, California 94104-4236  
Tel: (415) 362-3599  
Fax: (415) 363-7332

## FACSIMILE COVER SHEET

Monday, April 14, 2003, 2:20 PM

**TO:** Kathleen H. McGuire                   **FAX:** (202) 414-9299  
**CC:** Edward Nortargiscono                   **FAX:** (617) 482-3003  
**FROM:** Robert Sanford

RE: *Rice v. Abbott Labs, et al.; Thompson v. Abbott Labs, et al.*

MESSAGE: See attached correspondence.

We are transmitting a total of 2 pages, including this cover sheet. If you did not receive all of the pages or there is another problem, please call Norma Butler at (415) 362-3599, ext. 23.

## CONFIDENTIALITY NOTE

THIS AND ANY ACCOMPANYING PAGES CONTAIN INFORMATION FROM THE LAW OFFICES OF MOSCONI, EMBLIDGE & QUADRA, LLP WHICH IS CONFIDENTIAL AND PRIVILEGED. THE INFORMATION IS INTENDED FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF YOU ARE NOT THE INTENDED RECIPIENT, THEN BE AWARE THAT ANY DISCLOSURE, COPYING, DISTRIBUTION OR USE OF THE ACCOMPANYING DOCUMENT (OR THE INFORMATION CONTAINED IN IT) IS PROHIBITED. IF YOU HAVE RECEIVED THIS FACSIMILE TRANSMISSION IN ERROR, PLEASE NOTIFY OUR OFFICES IMMEDIATELY SO THAT WE CAN ARRANGE FOR RETRIEVAL AT NO COST TO YOU.



Kathleen H. McGuan • 202.414.9230 • kmcguan@reedsmith.com

# ReedSmith

April 15, 2003

VIA FACSIMILE NO. (415) 362-7332  
AND FIRST-CLASS MAIL

Robert D. Sanford, Esq.  
 Moscone, Emblidge & Quadra, LLP  
 180 Montgomery Street  
 Suite 1240  
 San Francisco, CA 94104-4230

Re: In re: Pharmaceutical Industry Average Wholesale Price Litigation,  
 MDL No. 1456

Dear Robert:

Thank you for your letter of April 14, 2003, regarding the *Rice* and *Thompson* cases, now transferred to the above-referenced multi-district litigation. I assume you will make whatever arguments you believe to be appropriate in an opposition to our motion filed with the Court and I will respond to them by filing a reply brief.

You correctly note that I will not accept service on behalf of Fujisawa USA, Inc. at this late date.

Fujisawa's Motion to Dismiss was served on March 25, 2003, in the manner ordered by the Court in its Case Management Order No. 2. We provided you with a copy of it on April 4, 2003, as a professional courtesy, when we learned that you had not subscribed to the Verilaw service as required by the Court's Order. Nevertheless, we have offered to extend the time for your clients to respond to the Motion to Dismiss until April 18, 2003.

Please contact me should you wish to discuss the matter further.

Sincerely,

REED SMITH LLP



Kathleen H. McGuan

KHM:clr

LONDON  
 NEW YORK  
 LOS ANGELES  
 SAN FRANCISCO  
 WASHINGTON, D.C.  
 PHILADELPHIA  
 PITTSBURGH  
 OAKLAND  
 PRINCETON  
 FALLS CHURCH  
 WILMINGTON  
 NEWARK  
 COVENTRY, U.K.  
 CENTURY CITY  
 RICHMOND  
 HARRISBURG  
 LEESBURG  
 WESTLAKE VILLAGE

1801 K Street, N.W.  
 Suite 1100 - East Tower  
 Washington, D.C. 20005-3373  
 202.414.9200  
 Fax 202.414.9299

reedsmit.com

## FAX TRANSMITTAL

## ReedSmith LLP

To: Robert D. Sanford, Esq.  
 Firm/Company: Moscone, Emblidge & Quadra, LLP  
 Fax Machine No: (415) 362-7332

From: Kathleen H. McGuan, Esq.  
 (202) 414-9230  
 Date: April 15, 2003

Fax Machine (202) 414-9299	Total Number of Pages, Including Cover Page: <u>2</u>
-------------------------------	-------------------------------------------------------

## Copies To:

Name	Firm/Company	Fax No.	Time Sent

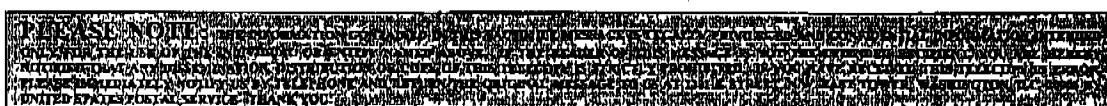
Notes: In re: Pharmaceutical Industry Average Wholesale Price Litigation, MDL No. 1456

If you do not receive all of the pages, please call Carol Russell at (202) 414-9307

Client Number 946291

Matter Number 60002

Attorney Number 1162



LOI	LONDON
NEY	NEW YORK
LOS	LOS ANGELES
SAN	SAN FRANCISCO
WA	WASHINGTON, D.C.
PHI	PHILADELPHIA
PIT	PITTSBURGH
OAK	OAKLAND
PRI	PRINCETON
FAL	FALLS CHURCH
WIL	WILMINGTON
NEW	NEWARK
COV	COVENTRY, U.K.
CET	CENTURY CITY
RIC	RICHMOND
HAI	HARRISBURG
LEE	LEESBURG
WE	WESTLAKE VILLAGE



LAW OFFICES OF  
**MOSCONE, EMBLIDGE & QUADRA, LLP**  
180 Montgomery Street, Suite 1240  
San Francisco, California 94104-4230  
Tel: (415) 362-3599  
Fax: (415) 362-7332

April 16, 2003

**Via Facsimile Only**

Kathleen H. McGuan  
Reed Smith  
1301 K Street, N.W.  
Suite 1100 – East Tower  
Washington D.C. 20005-3373

**RE: In re Pharmaceutical Industry Average Wholesale Price Litigation,  
MDL No. 1456, Rice v. Abbott Laboratories, et al., N.D. Cal. Case No. C 02-  
3925 MJJ, Thompson v. Abbott Laboratories, et al, N.D. Cal. Case No. C 02-  
4450 MJJ**

Dear Ms. McGuan:

I received your letter of April 15, 2003. From our phone conversation, I understood that Fujisawa USA, Inc. will not withdraw its motion to dismiss in order to permit service of process to occur within an agreed timeframe and in a manner that is coordinated with the multitude of other actions in MDL No. 1456. If this is not the case, please contact me to discuss the matter.

Very truly yours,

MOSCONE, EMBLIDGE & QUADRA LLP

By   
Robert D. Sanford

cc: Edward Nortargiacomo, Esq.

HP LaserJet 3100  
Printer/Fax/Copier/ScannerAD HOC BROADCAST REPORT for  
Moscone, Emblidge & Quadra, LLP  
415 984 0414  
Apr-16-03 2:30PM

Job	Phone Number	Start Time	Pages	Mode	Status
116	12024149299.....	4/16 2:28PM.....	2/ 2	BC .....	Completed.....
116	16174823003.....	4/16 2:29PM.....	2/ 2	BC .....	Completed.....

LAW OFFICES OF  
**MOSCONE, EMBLIDGE & QUADRA, LLP**  
180 Montgomery Street, Suite 1200  
San Francisco, California 94104-4238  
Tel: (415) 362-3599  
Fax: (415) 362-7792

**FACSIMILE COVER SHEET**

Wednesday, April 16, 2003, 2:26 PM

**TO:** Kathleen H. McGuan                    **FAX:** (202) 414-9299  
**CC:** Edward Nontagliacomo                    **FAX:** (617) 482-3003  
**FROM:** Robert Sanford

**RE:** *Rice v. Abbott Labs, et al.; Thompson v. Abbott Labs, et al.***MESSAGE:** See attached correspondence.

We are transmitting a total of 2 pages, including this cover sheet. If you did not receive all of the pages or there is another problem, please call Norma Butler at (415) 362-3599, ext. 23.

**CONFIDENTIALITY NOTE**

THIS AND ANY ACCOMPANYING PAGES CONTAIN INFORMATION FROM THE LAW OFFICES OF MOSCONE, EMBLIDGE & QUADRA, LLP WHICH IS CONFIDENTIAL AND PRIVILEGED. THIS INFORMATION IS INTENDED FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF YOU ARE NOT THE INTENDED RECIPIENT, THEN BE AWARE THAT ANY DISCLOSURE, COPYING, DISTRIBUTION OR USE OF THE ACCOMPANYING DOCUMENT (OR THE INFORMATION CONTAINED IN IT) IS PROHIBITED. IF YOU HAVE RECEIVED THIS FACSIMILE TRANSMISSION IN ERROR, PLEASE NOTIFY OUR OFFICES IMMEDIATELY SO THAT WE CAN ARRANGE FOR RETRIEVAL AT NO COST TO YOU.